



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2012-0022; FRL-9949-09-Region 6]

Approval and Promulgation of Implementation Plans; Louisiana; Permitting of Greenhouse Gases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving a revision to the Louisiana State Implementation Plan (SIP) submitted on December 21, 2011. This revision outlines the State's program to regulate and permit emissions of greenhouse gases (GHGs) in the Louisiana Prevention of Significant Deterioration (PSD) program. We are approving these provisions to the extent that they address the GHG permitting requirements for sources already subject to PSD for pollutants other than GHGs. We are disapproving these provisions to the extent they require PSD permitting for sources that emit only GHGs above the thresholds triggering the requirement to obtain a PSD permit since that is no longer consistent with federal law. The EPA is taking this action under section 110 and part C of the Clean Air Act (CAA or Act).

DATES: This rule is effective on * * * * *

on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2012-0022. All documents in the docket are listed on the <http://www.regulations.gov>

Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, wiley.adina@epa.gov, (214) 665-2115.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our May 6, 2016 proposal. *See* 81 FR 27382. In that document we proposed to approve as revisions to the Louisiana SIP, the revisions to the Louisiana PSD permitting program submitted on December 21, 2011, that provide the State the authority to regulate and permit emissions of GHGs from Step 1 sources in the Louisiana PSD program. We also proposed to disapprove the provisions submitted on December 21, 2011, that would enable the State of Louisiana to regulate and permit Step 2 sources under the Louisiana PSD program because the submitted provisions were no longer consistent with federal laws.

Our proposed action also corrected an omission in the EPA’s August 19, 2015, proposed approval of the Louisiana Major New Source Review program, where we did not explicitly propose approval of a portion of the definition of “major stationary source.” To correct this omission, we provided an additional opportunity for the public to comment on the revisions to

the definition of “major stationary source” at LAC 33:III.509(B) submitted on December 20, 2005 as subparagraph (e), but was moved to subparagraph (f) in the December 21, 2011 submittal.

II. Response to Comments

We received comments from the Louisiana Department of Environmental Quality (LDEQ). Our responses are provided below.

Comment 1: The LDEQ commented that the State initiated rulemaking AQ358 on January 20, 2016, to remove the PSD GHG Step 2 permitting provisions. The rulemaking was promulgated on April 20, 2016, after no comments were received during the public comment period. Therefore, LDEQ’s PSD program no longer contains permitting requirements for Step 2 sources. The LDEQ also submitted copies of the AQ358 rulemaking for reference.

Response 1: We recognize that the LDEQ has completed a rulemaking to remove the Step 2 GHG permitting provisions from the LDEQ PSD program consistent with our proposed partial disapproval. Today’s final action disapproves the Step 2 provisions that were submitted for the EPA’s consideration as a revision to the Louisiana SIP. No further actions are necessary on the part of the LDEQ to remove the Step 2 provisions adopted by the LDEQ on April 20, 2011 and submitted December 21, 2011, from our consideration. Further, today’s final action also removes the portion of the Louisiana SIP at 40 CFR 52.986(c) where the EPA narrowed our approval of the Louisiana PSD SIP to apply to Step 2 permitting. *See* 75 FR 82536, December 30, 2010.

Comment 2: The LDEQ provided comment on the EPA’s interpretation of the “automatic rescission provisions” under LAC 33:III.501(C)(14). Specifically, the LDEQ commented that “In the event of a “change in federal law” or a Supreme Court or D.C. Circuit “order which limits or renders ineffective the regulation” of GHGs under Part C of Title I of the Clean Air Act, LDEQ

will provide notice to the general public and regulated community if such law or order will impact how LDEQ's [sic] administers its PSD program under LAC 33:III.509. In addition, LDEQ will ensure that any such changes are consistent with EPA's interpretation of the law or order."

Response 2: The EPA appreciates the comment from the LDEQ and the affirmation that the LDEQ will provide notice to the general public and community in the event of a change in federal law or a court decision that limits or renders ineffective the regulation of GHGs under the PSD program. We note that the LDEQ stated public notice would likely be through the LDEQ website; we find this method to be sufficient to satisfy the requirements of section 110(l) of the CAA.

III. Final Action

We are approving the following revisions to the Louisiana SIP submitted on December 21, 2011. The revisions were adopted and submitted in accordance with the CAA and are consistent with the laws and regulations for PSD permitting of GHGs; therefore we are taking final action to approve these revisions under section 110 and part C of the Act.

- New provisions as LAC 33:III.501(C)(14) adopted on April 20, 2011 and submitted December 21, 2011;
- New definitions of "carbon dioxide equivalent" and "greenhouse gases" at LAC 33:III.509(B) adopted on April 20, 2011 and submitted December 21, 2011;
- Revisions to the definitions of "major stationary source" paragraphs (a) and (b) and "significant" at LAC 33:III.509(B) adopted on April 20, 2011 and submitted on December 21, 2011; and

- Revisions to the definition of “major stationary source” paragraph (e) as submitted on December 20, 2005, and renumbered to paragraph (f) in the April 20, 2011 adoption submitted on December 21, 2011.

As a result of our final approval of the above revisions, the EPA is also removing the existing provisions at 40 CFR 52.986(c) under which the EPA narrowed the applicability of the Louisiana PSD program to regulate sources consistent with federal PSD permitting requirements.

We are disapproving the following severable portions of the December 21, 2011 Louisiana SIP submittal that establish GHG permitting requirements for Step 2 sources:

- Revisions to the definitions of “major stationary source” paragraph (c) and “significant” as it pertains to Step 2 sources, adopted on April 20, 2011 and submitted on December 21, 2011.

As a result of our final disapproval of the above revisions, the EPA is adding a new entry at 40 CFR 52.986(c) to reflect the disapproval of the PSD GHG Step 2 provisions. We are taking this final action under section 110 and part C of the Act; as such, we are not imposing sanctions as a result of this final disapproval. This final disapproval does not require the EPA to promulgate a Federal Implementation Plan because we are finding that the submitted provisions are inconsistent with federal laws for the regulation and permitting of GHG emissions.

IV. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Louisiana regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action proposes approval of the portions of the submitted revisions to State law for the regulation and permitting of GHG emissions consistent with federal requirements and proposes disapproval of the portions of the state laws that do not meet Federal requirements for the regulation and permitting of GHG emissions.

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. *Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. There is no burden imposed under the PRA because this action proposes to disapprove submitted revisions that are no longer consistent with federal laws for the regulation and permitting of GHG emissions.

C. *Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action proposes to disapprove submitted revisions that are no longer consistent with

federal laws for the regulation and permitting of GHG emissions, and therefore will have no impact on small entities.

D. *Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action proposes to disapprove submitted revisions that are no longer consistent with federal laws for the regulation and permitting of GHG emissions, and therefore will have no impact on small governments.

E. *Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This action proposes to disapprove provisions of state law that are no longer consistent with federal laws for the regulation and permitting of GHG emissions; there are no requirements or responsibilities added or removed from Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this action.

G. *Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may

disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it disapproves state permitting provisions that are inconsistent with federal laws for the regulation and permitting of GHG emissions.

H. *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. *National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

J. *Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action is not subject to Executive Order 12898 because it disapproves state permitting provisions that are inconsistent with federal laws for the regulation and permitting of GHG emissions.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 7, 2016.

Ron Curry,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T – Louisiana

2. In §52.970(c), the table titled “EPA Approved Louisiana Regulations in the Louisiana SIP” is amended by revising the entries for “Section 501” and “Section 509” under Chapter 5 – Permit Procedures to read as follows:

§52.970 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

| State citation | Title/subject | State approval date | EPA approval date | Comments |
|--------------------------------------|-------------------------|---------------------|---|----------|
| * * * * * | | | | |
| Chapter 5 – Permit Procedures | | | | |
| Section 501 | Scope and Applicability | 4/20/2011 | [Insert date of publication in the Federal Register], [Insert Federal Register citation] | |
| * * * * * | | | | |

| | | | | |
|-------------|---|------------|---|---|
| Section 509 | Prevention of Significant Deterioration | 12/20/2012 | [Insert date of publication in the Federal Register], [Insert Federal Register citation] | SIP does not include the provisions for Step 2 GHG permitting at “major stationary source” paragraph (c) or “significant” as adopted on April 20, 2011. SIP does not include the PM _{2.5} SMC at LAC 33:III.509(I)(5)(a) from the 12/20/2012 adoption. LAC 33:III.509(I)(5)(a) is SIP-approved as of 10/20/2007 adoption. |
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3. Section 52.986 is amended by revising paragraph (c) to read as follows:

§52.986 Significant deterioration of air quality.

* * * * *

(c) The revisions to the Louisiana SIP adopted on April 20, 2011, and submitted on December 21, 2011, establishing PSD permitting requirements for sources that are classified as major and thus required to obtain a PSD permit based solely on their potential GHG emissions (“Step 2” sources) at the definition of “major stationary source” paragraph (c) and the definition of “significant” at LAC 33:III.509(B), are disapproved as inconsistent with federal law for the regulation and permitting of GHGs.